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[Proposed] Attorneys for the Official Committee of
Unsecured Creditors

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
NORTHERN DIVISION

In re:

HVI CAT CANYON, INC.

Debtor.

Case No.: 19-bk-11573-MB
Chapter 11

**REPLY OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS TO:**

- (1) CALIFORNIA STATE LANDS COMMISSION'S
LIMITED OBJECTION TO APPLICATION FOR
ORDER AUTHORIZING AND APPROVING THE
EMPLOYMENT OF PACHULSKI STANG ZIEHL
& JONES LLP AS COUNSEL FOR THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS,
EFFECTIVE AS OF AUGUST 16, 2019 [Docket
No. 346]; and**
- (2) CALIFORNIA STATE LANDS COMMISSION'S
LIMITED OBJECTION TO APPLICATION OF
THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS FOR AUTHORIZATION TO RETAIN
AND EMPLOY CONWAY MACKENZIE, INC. AS
FINANCIAL ADVISOR, EFFECTIVE AS OF
AUGUST 16, 2019 [Docket No. 347]**

[Relates to Docket Nos. 214, 219, 346 and 347]

Date: October 28, 2019
Time: 10:00 a.m.
Place: Courtroom 201
U.S. Bankruptcy Court
1415 State Street
Santa Barbara, CA 93101
Judge: Hon. Martin R. Barash

The Official Committee of Unsecured Creditors (the “Committee”) appointed in the bankruptcy case of HVI Cat Canyon, Inc. (the “Debtor”), respectfully submits the following omnibus reply to the (1) *California State Lands Commission’s Limited Objection to Application For Order Authorizing and Approving the Employment of Pachulski Stang Ziehl & Jones LLP as Counsel for the Official Committee of Unsecured Creditors, Effective as of August 16, 2019* [Docket No. 346] (the “PSZJ Retention Objection”); and (2) *California State Lands Commission’s Limited Objection to Application of the Official Committee of Unsecured Creditors for Authorization to Retain and Employ Conway Mackenzie, Inc. as Financial Advisor, Effective as of August 16, 2019* [Docket No. 347] (the “Conway Retention Objection,” and together with the PSZJ Retention Objection, the “Objections”), and represents as follows:¹

Under the Bankruptcy Code, the Committee is entitled to retain professionals. 11 U.S.C. § 1103(a) (the “committee may select and authorize the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.”). To that end, estate fiduciaries like the Committee are entitled to retain the professionals of their choosing. *See, e.g., In re Caldor, Inc.*, 193 B.R. 165, 170 (Bankr. S.D.N.Y. 1996) (“Public policy favors permitting parties to retain professionals of their choice.”) (citing cases).

PSZJ and Conway MacKenzie have been working on behalf of the Committee since they were retained on August 15 and 16, 2019, respectively. Even if a Chapter 11 Trustee is appointed on or about October 18, 2019, the Committee will still continue to exist and will still require professionals to carry out its duties. Through the Objections, the California State Lands Commission (the “Commission”) has not offered, and cannot offer, any substantive reason why, under sections 327, 328, and 1103 of the Bankruptcy Code, the Committee cannot retain PSZJ and Conway MacKenzie. For that reason alone, the Objections should be overruled.

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the *Application for an Order Authorizing and Approving the Employment of Pachulski Stang Ziehl & Jones LLP as Counsel for the Official Committee of Unsecured Creditors, Effective as of August 15, 2019* [ECF No. 214] (the “PSZJ Retention Application”), and the *Application of the Official Committee of Unsecured Creditors Pursuant to Sections 328(a), 330 and 1103 of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure 2014(a) and 2016, and Local Rules 2014-1 and 2016-1 for Authorization to Retain and Employ Conway MacKenzie, Inc. as Financial Advisor, Effective as of August 16, 2019* [ECF No. 219] (the “Conway Retention Application,” and together with the PSZJ Retention Application, the “Retention Applications”), as applicable.

1 Instead, the Commission appears to argue that the Court should deny the Retention
2 Applications because there may be “duplication” as between the Committee and a Chapter 11
3 Trustee, should one be appointed (the appointment of whom, for the avoidance of doubt, the
4 Committee strongly supports). This argument is purely hypothetical and, in any event,
5 inappropriately interposed at the professional retention stage.

6 First, the Committee’s professionals have already been working in this case for nearly two
7 months. This fact will not change with the appointment of a Chapter 11 Trustee, which the
8 Objections appear to ignore. The Committee must be permitted to retain professionals for the past
9 work that has already been performed and for the future work yet to come.

10 Second, notwithstanding the potential appointment of a Chapter 11 Trustee, the Committee
11 will remain in place and must still execute its statutory and fiduciary duties, which will require the
12 assistance of its chosen professionals. *See, e.g., In re Foss Manufacturing Co., Inc.*, Case No. 05-
13 13724 (JMD), ECF No. 283 (Bankr. D.N.H. Nov. 21, 2005) (overruling an objection that the
14 creditors’ committee should not be permitted to retain a financial advisor because of the appointment
15 of a chapter 11 trustee).

16 Finally, hypothetical duplication as between estate professionals is an issue properly
17 addressed at the professional compensation—not the professional retention—stage; nowhere in the
18 provisions of the Bankruptcy Code or Bankruptcy Rules is hypothetical future duplication of
19 services mentioned as a ground for disqualification of a proposed estate professional. *See* 11 U.S.C.
20 § 330(a)(4)(A)(i) (stating that a court should not allow *compensation* for “unnecessary duplication of
21 services”).

22 For these reasons, the Committee urges the Court to approve the Retention Applications and
23 overrule the Objections with prejudice.

24 Dated: October 11, 2019

PACHULSKI STANG ZIEHL & JONES LLP

25
26 By /s/ Jeffrey N. Pomerantz
[Proposed] Attorneys for Official Committee
27 of Unsecured Creditors
28

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
10100 Santa Monica Boulevard, 13th Floor, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (*specify*): **REPLY OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO: (1) CALIFORNIA STATE LANDS COMMISSION'S LIMITED OBJECTION TO APPLICATION FOR ORDER AUTHORIZING AND APPROVING THE EMPLOYMENT OF PACHULSKI STANG ZIEHL & JONES LLP AS COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, EFFECTIVE AS OF AUGUST 16, 2019 [DOCKET NO. 346]; AND (2) CALIFORNIA STATE LANDS COMMISSION'S LIMITED OBJECTION TO APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AUTHORIZATION TO RETAIN AND EMPLOY CONWAY MACKENZIE, INC. AS FINANCIAL ADVISOR, EFFECTIVE AS OF AUGUST 16, 2019 [DOCKET NO. 347]** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **October 11, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **October 11, 2019**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

VIA U.S. MAIL

Office of the U.S. Trustee
Brian Fittipaldi
1415 State Street, Suite 148
Santa Barbara, CA 93101

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **October 11, 2019**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA OVERNIGHT DELIVERY

Honorable Martin R. Barash
U.S. Bankruptcy Court
21041 Burbank Boulevard, Suite 342 / Courtroom 303
Woodland Hills, CA 91367-6603

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 11, 2019
Date

Nancy H. Brown
Printed Name

/s/ Nancy H. Brown
Signature

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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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